

Minutes of the Special Meeting of the Gallup City Council, City of Gallup, New Mexico, held in the Council Chambers at City Hall, 110 West Aztec Avenue, at 4:00 p.m. on Monday, June 29, 2015.

The meeting was called to order by Mayor Jackie McKinney.

Upon roll call, the following were present:

Mayor: Jackie McKinney

Councilors: Linda Garcia
Allan Landavazo
Yogash Kumar
Fran Palochak

Also present: Maryann Ustick, City Manager
George Kozeliski, City Attorney

Presented to the Mayor and Councilors were the following Discussion/Action Topics:

1. First Revision to the Network Integration Transmission Service Agreement (NITSA) and the Network Operating Agreement (NOA) with Public Service Company of New Mexico (PNM) – Richard Matzke, Director, Gallup Electric Department

Mr. Matzke said the purpose of the proposed revision to the NITSA and NOA is to reflect the City's purchase of PNM facilities and the removal of the monthly Direct Assignment Facilities Charge to the City of about \$30,000 per month.

Discussion followed concerning the filing of the NITSA and NOA by PNM with the Federal Energy Regulatory Commission (FERC) and the continuing costs paid by the City for transmission service.

Following discussion, Councilor Landavazo made the motion to approve the First Revision to the Network Integration Transmission Service Agreement and the Network Operating Agreement with Public Service Company of New Mexico. Seconded by Councilor Palochak. Roll call: Councilors Landavazo, Palochak, Kumar, Garcia, and Mayor McKinney all voted aye.

2. Purchase of the Alpine Lumber Property – George Kozeliski, City Attorney

Mr. Kozeliski said the subject property consists of 6.7 acres of land with the enclosed buildings containing 19,385 square feet of space and the covered sheds with 9,120 square feet. The property was originally listed at approximately \$1 million and was recently listed at \$750,000. In accordance with the Mayor and Councilors' direction, Mr. Kozeliski contacted Alpine Lumber representatives to submit an offer on behalf of the

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City to purchase the property in the amount of \$400,000. The City's offer was satisfactory to Alpine Lumber and a purchase agreement was negotiated with them. Mr. Kozeliski also said AC Houston Lumber Company, the previous owner of the property, is responsible for the cleanup of the environmental issue (underground storage tank) on the property. Possible options for the property include the proposed construction of a tunnel beneath the railroad tracks on Second Street, the proposed development of a convention center, and the use of the present structures on the property to relieve overcrowding of the City's facilities on Warehouse Lane.

Discussion followed concerning environmental assessments for the property, the forthcoming appraisal of the property and the responsibility of AC Houston Lumber Company to address the environmental issue on the property.

Following discussion, Councilor Kumar made the motion to approve the purchase of the Alpine Lumber property. Seconded by Councilor Palochak. Roll call: Councilors Kumar, Palochak, Landavazo, Garcia, and Mayor McKinney all voted aye.

3. Authorization to Proceed with Litigation Against the State of New Mexico Department of Taxation and Revenue Concerning the Phase-Out of Gross Receipts Tax Hold Harmless Provisions – George Kozeliski, City Attorney

Mr. Kozeliski said the City has spent time and money during the past two sessions of the New Mexico Legislature to lobby for changes to legislation that was enacted to phase-out the hold-harmless distributions from the State to municipalities with populations above 10,000. The City's lobbying efforts were not successful as the process for phasing-out the State's hold-harmless provisions will begin July 1, 2015. The City is expecting to lose approximately \$200,000 during the first year as the amount will increase annually during the next 17 years until the State's hold-harmless distribution is completely phased-out. After 17 years, the total phase-out of the State's hold-harmless distribution will cost the City approximately \$3 million per year. The City has the option of imposing a 3/8 gross receipts tax as provided under State law or it may have to cut services to its citizens. Mr. Kozeliski said there are two legal theories behind the proposed litigation against the State. First, all municipalities should be considered a single group. Under State law, municipalities with populations under 10,000 will continue to receive their hold-harmless distributions from the State. Gallup's population is over 10,000 and will begin losing its hold-harmless distributions from the State through a phase-out process during the next 17 years. Since Gallup's citizens will be treated differently, it will be a violation of their rights to equal protection under the United States Constitution and the New Mexico Constitution. Secondly, the City imposed a municipal gross receipts tax to finance its bonds; therefore, the tax cannot be repealed until the bonds are paid off. Since the State will be cutting the gross receipts

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tax distributions to the City, the State will be impairing the City's ability to pay back its bonds. Mr. Kozeliski said the proposed litigation against the State should not be considered a "slam-dunk winner" for the City. If the Mayor and Councilors decide to proceed with the litigation, the best opportunity for filing the lawsuit is on or before July 1, 2015 when the law goes into effect. Otherwise the City may file the lawsuit at a later time since the law will be a continuing injury to the City of Gallup and its citizens.

Discussion followed concerning whether or not to proceed with the proposed litigation against the State.

Councilor Landavazo said regardless of whether the proposed lawsuit will anger the State or not, the Council has a fiduciary responsibility to the citizens of Gallup by protecting their tax dollars. He said the Council will need to make a sound decision regarding the matter since the State's action will harm the City significantly in the future.

Councilor Palochak said she is grateful to the Governor for providing the funds needed for the Allison Project; however, she also expressed her concerns with the future of the City and the current difficulties in balancing its budget for Fiscal Year 2016. She said the Council will not be serving the community well unless it attempts to get the hold-harmless distribution from the State's reinstated.

Councilor Kumar asked how much money would be generated if the 3/8 gross receipts tax was imposed. Patty Holland, Chief Financial Officer, said if the City imposed the 3/8 gross receipts tax the City will immediately lose its entire hold-harmless distribution from the State which will result in an average loss of about \$3.1 million annually. The 3/8 gross receipts tax imposed by the City would generate almost \$2.4 million which would result in annual decrease of about \$760,000.

Discussion followed concerning current and potential litigation that may be taken against the State by other municipalities with populations above 10,000; counties in the state imposing the 3/8 gross receipts tax within the limits of their municipalities; and the varying situations in other municipalities in the state due to their populations, tax bases and needs.

Councilor Garcia said she agrees with Councilors Landavazo and Palochak regarding the Council's responsibility to its citizens; however, the City has a working relationship with the State which is very rare. Although she was previously adamant about proceeding with the proposed litigation against the State, she believes there are other avenues for finding a better solution to the problem.

Councilor Landavazo expressed his concerns with imposing the 3/8 gross receipts tax

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since Gallup already has a high tax rate. By imposing any increment of the 3/8 gross receipts tax, it will create a burden on those who travel to Gallup to do business.

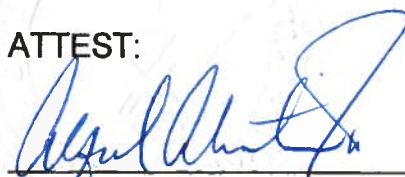

Mayor McKinney said the hold-harmless situation is a perfect “catch-22” scenario. He said State officials encouraged the City not to impose the 3/8 gross receipts tax and to allow for economic growth during the next 17 years. Mayor McKinney said State officials are failing to realize the City’s loss in revenue and how the loss increases every year. He said soon it will become difficult for future administrations of the City to balance their budgets. If both Gallup and McKinley County imposes the 3/8 gross receipts tax, Gallup’s tax rate will be higher than 9%. Since the City may upset the State by proceeding with the proposed litigation, Mayor McKinney said the City will have to fend for itself in the future. If the City proceeds with litigation against the State, he recommended naming the legislators in the lawsuit who voted for the bill to phase-out the hold-harmless distributions to certain municipalities.

Discussion followed concerning Gallup’s shortfalls when it comes to legislative funding from the State in previous years.

Following discussion, Councilor Landavazo made the motion to table the proposed litigation against the State until after the next session of the New Mexico Legislature and to give the Legislature an opportunity to come up with a solution to help the Gallup community and other communities in the state; and to consider the proposed litigation against the State next spring depending on the outcome of the next Legislative Session. Seconded by Councilor Kumar. Roll call: Councilors Landavazo, Kumar, Garcia, and Mayor McKinney voted aye. Councilor Palochak voted nay. Motion carried.

There being no further business, Councilor Kumar made the motion to adjourn the meeting. Seconded by Councilor Garcia. Roll call: Councilors Kumar, Garcia, Landavazo, Palochak, and Mayor McKinney all voted aye.

ATTEST:


Alfred Abeita II, City Clerk
Jackie McKinney, Mayor